

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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DENNIS M. DONOVAN

Plaintiff,

v.

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C., ROBERT M. GAULT,
individually, and PETER J. MARATHAS, JR.,
individually,

Defendants.

Civil Action No. 04-12110-MLW

**ASSENTED-TO MOTION FOR DEFENDANTS'
MOTION TO DISMISS AND MEMORANDUM IN SUPPORT THEREOF
TO APPLY TO PLAINTIFF'S AMENDED COMPLAINT**

Defendants Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Robert M. Gault and Peter J. Marathas, Jr. (collectively the "defendants") hereby move for leave to have defendants' Motion to Dismiss and Memorandum in Support of Defendants' Motion to Dismiss apply to the Amended Complaint subsequently filed by plaintiff Dennis Donovan ("Donovan"). In support of this Motion the defendants state:

1. On October 26, 2004, the defendants filed a Motion to Dismiss the Complaint and Memorandum in Support of Defendants' Motion to Dismiss.
2. On November 4, 2004, Donovan filed an Amended Complaint under Fed. R. Civ. P. 15(a) in an attempt to remedy one of the grounds for dismissing the Complaint (lack of causation) identified by the defendants in the Motion to Dismiss. On November 5, 2004,

Donovan also filed Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss the Complaint (the "Opposition").

3. Except for the new allegations concerning causation, the Amended Complaint is substantively identical to the original Complaint. The parties have agreed, therefore, that defendants' Motion to Dismiss and Memorandum in Support of Defendants' Motion to Dismiss shall apply to, and should be considered by the Court in connection with, the Amended Complaint.

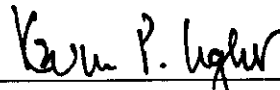
4. Pursuant to Local Rule 7.1(A)(2), Donovan's counsel has been contacted about this Motion and assents to it being granted.

WHEREFORE, the defendants request permission to have the Motion to Dismiss and memorandum in support thereof applied to, and considered by the Court in connection with, the Amended Complaint.

Respectfully submitted,

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C., ROBERT M. GAULT, and
PETER J. MARATHAS, JR.,

By their attorneys,



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Dated: November 19, 2004

I HEREBY CERTIFY THAT A TRUE COPY OF
THE ABOVE DOCUMENT WAS SERVED
UPON THE ATTORNEY OF RECORD FOR
EACH OTHER PARTY BY MAIL/ ~~FILE~~ ON

DATE 11/19/04 SIGNATURE K.P. Light